



**SO ORDERED.**

**SIGNED this 27 day of October, 2008.**

  
J. Rich Leonard  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION**

**IN RE:**

**KYLE MICHAEL BARTOLUCCI and  
FAITH MATTEI,**

**DEBTORS.**

**CASE NO. 08-06701-8-JRL  
Chapter 13**

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**ORDER**

This case is before the court on the order to show cause why the debtors' case should not be dismissed due to the ineligibility of the debtors to file jointly and for failure to pay the filing fee, and on the debtors' application to waive filing fees. On October 22, 2008, the court conducted a hearing on these matters in Wilmington, North Carolina.

On September 29, 2008, the debtors filed a joint petition for relief under Chapter 13 of the Bankruptcy Code. The debtors, who are mother and son, previously filed for Chapter 13 relief on July 15, 2008. The previous case was automatically dismissed pursuant to 11 U.S.C. § 521(i) on September 3, 2008, prior to the debtors paying the filing fee. On October 1, 2008, the court ordered the debtors to appear and to show cause as to why their current case should not be dismissed for ineligibility to file as joint debtors and failure to pay the filing fee. On October 14,

2008, the debtors submitted an application to pay their filing fee in the amount of \$274.00 in installments, along with an attachment in which Ms. Mattei requested that her filing fee be waived due to financial problems.

The Bankruptcy Code allows two debtors to file a joint petition for relief only if the petition is filed by an individual and the individual's spouse. 11 U.S.C. § 302(a). When joint debtors are ineligible to file a single petition for relief, the court need not dismiss the case in its entirety but may simply drop a party from the case. FED. R. BANKR. P. 7021. Section 1307(b) permits a Chapter 13 debtor to voluntarily dismiss her case at any time. 11 U.S.C. § 1307(b). In this case, the debtors are ineligible to file a joint petition because they are mother and son. As a result, Ms. Mattei volunteered at hearing to have her case dismissed. Pursuant to § 1307(b) and Rule 7021, the court will dismiss Ms. Mattei's case and allow the case to remain open as to Mr. Bartolucci.

Also at hearing, Mr. Bartolucci requested to pay the filing fee in the amount of \$274.00 in monthly installments of \$35.00 per month. In contrast, the trustee recommended that Mr. Bartolucci pay the filing fee in three monthly installments. The court agrees with the trustee and will not permit the debtor to stretch his obligation to pay the filing fee over a period longer than three months.

Pursuant to the foregoing, the court finds that the debtors have made no showing as to why the case should not be dismissed and hereby DISMISSES the Chapter 13 case as to Faith Mattei. The case will continue to go forward as to Kyle Michael Bartolucci, on the condition that Mr. Bartolucci file a Chapter 13 plan and amend his schedules to reflect only his financial affairs within 10 days of this order. In addition, the court DENIES the debtors' application to

waive filing fees and requires that Mr. Bartolucci pay the amount of \$274.00 in three monthly installments due on the fifteenth day of each month and beginning on November 15, 2008.

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